

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONSTON MARLAND,
Petitioner,

v.

Case No. 07-11628

THOMAS K. BELL,
Respondent.

Honorable Patrick J. Duggan

**ORDER DENYING PETITIONER'S MOTION TO STRIKE
RESPONDENT'S RESPONSIVE PLEADING**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on December 3, 2007.

Jonston Marland ("Petitioner") has filed a petition for a writ of habeas corpus alleging that he is incarcerated in violation of his constitutional rights. Presently before the Court is Petitioner's "Motion to Strike Respondent's Responsive Pleading to State Writ of Habeas Corpus," filed on November 26, 2007. (Doc. No. 7.)

In his motion, Petitioner asks this Court to strike Respondent's Answer in Opposition to Application for Writ of Habeas Corpus because he did not receive a copy. Federal Rule of Civil Procedure 12(f) authorizes a district court to strike from a pleading any "insufficient defense or any redundant, immaterial, impertinent or scandalous matter." FED. R. CIV. P. 12(f). Motions to strike under Rule 12(f) are viewed with disfavor and infrequently granted. *Brown & Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir. 1953)(internal citations omitted)("[T]he action of striking a pleading should be sparingly used by the courts. It is a drastic remedy to be resorted to

only when required for the purposes of justice.”)

The Court finds that Respondent’s response does not present any “insufficient defense or any redundant, immaterial, impertinent or scandalous matter,” so as to warrant striking the response under Rule 12(f). *See id.* Therefore, this Court will deny Petitioner’s motion.

However, because Petitioner claims that he did not receive Respondent’s response, the Court is, on this date, sending Petitioner a copy of Respondent’s response. Petitioner shall have 30 days from the date of this Order to reply to Respondent’s response.

Accordingly,

IT IS ORDERED that Petitioner’s Motion to Strike Respondent’s Responsive Pleading is **DENIED**.

IT IS FURTHER ORDERED Petitioner shall have 30 days from the date of this Order to reply to Respondent’s response.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Jonston Marland
#140714
Carson City Correctional Facility
10522 Boyer Road
Carson City, MI 48811

Debra M. Gagliardi, AAG